

Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Promotion of Competitive Networks
in Local Telecommunications Markets

WT Docket No. 99-217

Wireless Communications Association
International, Inc. Petition for Rulemaking
To Amend Section 1.4000 of the
Commission's Rules to Preempt
Restrictions on Subscriber Premises
Reception or Transmission Antennas
Designed to Provide Fixed Wireless
Services

Cellular Telecommunications Industry
Association Petition for Rulemaking and
Amendment of the Commission's Rules
To Preempt State and Local Imposition of
Discriminatory and/or Excessive Taxes
And Assessments

COMMENTS OF WORLDCOM, INC.

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SUMMARY

In the almost year and a half since the release of the Commission's Competitive Networks Order, the market for local and advanced telecommunications services in MTEs is still not competitive. The reason for this is simple. Building owners and landlords still continue to impose unreasonable rates and discriminatory terms and conditions on competitive local exchange carriers (CLECs) for access to tenants in MTEs. In contrast, the incumbent LECs (ILECs) enjoy free, ubiquitous and unconditional access. CLEC inability to gain access to buildings on non-discriminatory terms and at reasonable rates continues to be a devastating barrier to entry, severely limiting CLEC business opportunities, CLEC network expansion, competition in the local and advanced services markets, and customer choice.

WorldCom urges the Commission to adopt rules to ensure that multi-tenant environment (MTE) owners offer competing telecommunications service providers access to their tenants at reasonable rates and on non-discriminatory terms and conditions. The Commission should establish rules that eliminate the barriers that competitive service providers face in gaining access to tenants in MTEs. These rules should remove the disincentives for competitive service providers to make facilities-based investments in the advanced services market. A national set of policy principles, using the rules established in Texas as a model, for the states to follow that ensure CLECs reasonable and nondiscriminatory access to tenants in MTEs.

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COMMENTS OF WORLDCOM, INC.

Pursuant to the Commission's request for comments on the current state of the market for local and advanced telecommunications services in multitenant environments,¹ WorldCom hereby submits its comments.

¹*Promotion of Competitive Networks in Local Telecommunications Markets*, WT Docket No. 99-217, Public Notice (released November 30, 2001).

I. Introduction

Although the Commission, in its Competitive Networks Order,² established certain requirements to increase competitive telecommunications options for tenants in multi-tenant environments (MTEs), the Order fell short of mandating a complete non-discrimination scheme under which all carriers would be guaranteed access to all buildings on equal terms and conditions.³ The Commission, instead, chose to wait to see if the measures it adopted in the Order helped to significantly advance competition and customer choice for business and individuals located in multi-tenant environments (MTEs).⁴ The Commission also chose to monitor the real estate industry's efforts to develop best practices and model agreements.⁵ Should such industry efforts fail to resolve the Commission's concerns regarding the ability of premise owners to unreasonably deny competing telecommunications service providers access to customers in MTEs, the Commission promised to "consider taking additional action, including adopting rules to assure that MTE owners offer competing telecommunications service providers access to their premises."⁶

In the almost year and a half since the release of the Competitive Networks Order, the market for local and advanced telecommunications services in MTEs is still not competitive. Customers in commercial and residential buildings across the United States

² *Promotion of Competitive Networks in Local Telecommunications Markets*, WT Docket No. 99-217, First Report and Order and Further Notice of Proposed Rulemaking in WT Docket No. 99-217, Fifth Report and Order and Memorandum Opinion and Order in CC Docket No. 96-98, and Fourth Report and Order and Memorandum Opinion and Order in CC Docket No. 88-57, FCC 00-366 (released October 25, 2000)("Competitive Networks Order").

³ The Competitive Networks Order prohibited new exclusive contracts between building owners and local exchange carriers (LECs), clarified that CLECs have the right to use conduit still owned by the incumbent LECs, and in certain circumstances (e.g., when a building owner has not established a single point of entry), the right to lease ILEC intrabuilding wire as an unbundled network element. *Id.* at ¶ 6.

⁴ *Id.* at ¶ 2.

⁵ *Id.*

still have limited choice in telecommunications service providers. The reason for this is simple. Building owners and landlords still continue to impose unreasonable rates and discriminatory terms and conditions on competitive local exchange carriers (CLECs) for access to tenants in MTEs. In contrast, the incumbent LECs (ILECs) enjoy free, ubiquitous and unconditional access. CLEC inability to gain access to buildings on non-discriminatory terms and at reasonable rates continues to be a devastating barrier to entry, severely limiting CLEC business opportunities, CLEC network expansion, competition in the local and advanced services markets, and customer choice.

Contrary to the Commission's hopes, the real estate industry has failed to develop a set of best practices based on non-discriminatory and reasonable terms that are acceptable to competitive carriers. Instead, the building owners' trade group, the Real Access Alliance (RAA) has proposed a model agreement that has proven to be utterly useless as a vehicle for significantly advancing competition and customer choice for business and residential customers located in MTEs. The model agreement fails to ensure that tenants in MTEs will be able to choose their telecommunications provider; it does nothing to speed up the negotiation process; it is excessively long and detailed;⁷ and it does nothing to ensure non-discriminatory terms for CLECs. By failing to address the factors causing unreasonable delays gaining access to buildings, namely the unreasonable and discriminatory terms and conditions owners continue to seek,⁸ the real estate industry

⁶ *Id.*

⁷ The model agreement that the RAA compiled was over fifty pages long. Agreements under ten pages long are the industry norm. WorldCom's model license agreement is only 4 pages long.

⁸ For example, the model agreement fails to specify that building owners will respond to entrant's requests for access in a reasonable amount of time. The Real Access Alliance promised that they would respond to requests for access within 30 days. *See* Letter to William E. Kennard, Chairman, Federal Communications Commission, from The Members of the Real Access Alliance, WT Docket No. 99-217 and CC Docket No. 96-98, dated September 6, 2000. This promise is not reflected in the model agreement. The model agreement fails to set reasonable time frames for concluding negotiations, primarily because it fails to

has made clear they are not committed to giving their tenants timely communications choices. Not surprisingly, according to a recent study conducted by the SBPP, the RAA's model agreement is rarely used.

The difficulty competitors have in gaining access to MTE environments also has a negative impact on CLEC ability to provide advanced services. Landlord discriminatory practices and unreasonable demands delay CLEC ability to deploy advanced services equipment. CLECs that cannot access buildings cannot deploy the fiber rings necessary to support advanced services. Landlords' discriminatory practices also raise CLEC cost of providing advanced services, thus creating disincentives for competitive service providers to make the facilities-based investments that would eliminate the barriers to advanced services deployment. These practices also impact WorldCom's ability to provide fixed wireless broadband access.

WorldCom urges the Commission to adopt rules to ensure that multi-tenant environment (MTE) owners offer competing telecommunications service providers access to their tenants at reasonable rates and on non-discriminatory terms and conditions. The Commission should establish rules that eliminate the barriers that competitive service providers face in gaining access to tenants in MTEs. These rules should remove the disincentives for competitive service providers to make facilities-based investments in the advanced services market. Further, the Commission should establish a national set of policy principles, using the rules established in Texas as a

address the anti-competitive and unreasonable terms and conditions (exorbitant rates, use of the landlord's cable distribution system, and requirements to reveal equipment, revenue and services) that are the cause of delay. The model contract fails to set reasonable time frames for letting a licensee begin work to serve a tenant once a contract is negotiated. WorldCom, like other CLECs, has service level agreements that obligate us to begin service within two weeks after a contract is negotiated. However, WorldCom often must wait months after a contract is negotiated before getting permission to perform actual upgrades and/or installation work.

model, for the states to follow that ensure reasonable and nondiscriminatory access to tenants in MTEs.

II. The Market For Local And Advanced Telecommunications Services In MTEs Is Still Not Competitive

Customers in commercial and residential buildings across the United States still have limited choice in telecommunications service providers. Only five percent of commercial tenants nationwide have access to competitive telecommunications services.⁹ This is due in large part to the fact that building owners and landlords still favor ILECs. In most cases, ILECs do not pay for access to these buildings. They generally operate without the need of a lease and are not required to make either one-time or ongoing payments to landlords. This free and ubiquitous access gives ILECs a tremendous economic advantage over competitors in serving tenants in these buildings. The ILECs' widely extensive fiber networks extend to virtually every commercial office building in the United States.¹⁰

CLECs are not granted access to buildings on the same terms and at the same rates that ILECs are. Building owners usually demand that CLECs pay unreasonable fees or high rents for access. Additionally, many building owners impose unreasonable and discriminatory terms and conditions on CLECs, delay negotiations with CLECs, and even deny CLECs building access altogether. Even in the most competitive serving areas¹¹ in major cities, most of the buildings where CLEC have customers are served only by incumbent LEC facilities. The scope of CLEC networks has not expanded to any

⁹ See, e.g., ALTS, *The State of Local Competition 2001*, at 28 (2001), available at <http://www.alt.s.org/filings/022001annualreport.pdf> (last visited March 8, 2002) (also noting that "less than 1% of residential tenants ... have access to competitive telecommunications services.")

significant degree. CLEC networks extend to only 30,000 commercial office buildings. They have only a few tens of thousands of local fiber route miles. Extension of CLEC networks to additional customer buildings remains prohibitively expensive and time-consuming.

The ILECs have not made their own entrance access, conduits, riser cable, inside wiring, and other rights-of-way for MTEs available to competitive carriers on reasonable and non-discriminatory terms, nor have they made their contracts with MTE owners routinely available so that competitive service providers can make informed decisions about the extent of access that can be obtained through existing ILEC agreements.

III. Discriminatory Rates And Terms Ensure ILECs Ubiquitous Access and Simultaneously Reduce Competitive Entry, Harming CLEC Deployment, Customer Satisfaction, and Network Efficiency

Most building owners require CLECs to pay for 1) the right to enter their building; 2) the floor space required to install circuit equipment within the building; and 3) the use of the building's riser conduit. The amount of compensation varies from building to building, but access can cost well over a thousand dollars per month, usually over a five or ten year lease period.¹²

¹⁰ As monopoly providers operating under rate-of-return regulation, incumbent LECs had the incentive and ability over an extended period of time to build out their networks ubiquitously. As a result, the incumbents already have facilities in place for virtually every building within their region.

¹¹ The most competitive serving areas are those served by central offices in which CLECs have collocated.

¹² Landlords usually provide no reasonable rationale for these charges. The charges landlords impose on CLECs for access to MTEs include the following:

- Fee for use of space
- Fee for use of risers
- Administrative fees that range from \$1500 - \$5000 up front (usually to pay for consultant);
- Oversight fees
- Processing fees
- Security deposit
- Meet-Me-Room (MMR) fees, even where a CLEC may have point-of-presence (POP) in building already.
- Cross-connect fees
- Fee for occupied space

In addition, some MTE owners often demand a portion of competitors' gross revenues – averaging anywhere from three to seven percent – as a condition for MTE access. In some cases, MTE owners require competitors to pay a fixed monthly rent -- typically, square footage multiplied by a negotiated dollar amount -- in addition to a percentage of revenues. In contrast, ILECs typically receive access to these MTEs without paying any rent at all. Moreover, MTE owners often demand a substantial one-time, non-refundable fee (e.g., \$50,000 per entrance) or an up-front deposit equal to several months' payments. No similar requirements are imposed on ILECs as a condition of MTE access.

To properly serve its customers, WorldCom typically needs significant point-of-presence (POP) space to place its electronic equipment. Due to high rent demands or substantial increases in rental rates made by landlords, WorldCom has been forced to decommission its POPs in several buildings across the country.¹³ Frequently, WorldCom has been forced to collocate, rather than put in a POP, due to landlords' refusal to

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- Cable distribution system (CDS) fee. This fee is imposed in situations where the landlord has put in cable or copper and says that no one can put in their own -- all must pay monthly recurring fees. This is the backbone of the BOMA Agreement and the predecessor to the MMR.

¹³ WorldCom has decommissioned 14 POPs in Texas and 2 POPs in Colorado, partially due to landlords' high rent demands. For instance, WorldCom was forced to decommission a POP in a building in Century Park in Los Angeles when the landlord increased the rent of \$750 to \$1,000 per month during the term of the agreement. The landlord further notified WorldCom that he would increase the rent to \$1,650 per month during the renewal term since, according to the landlord, other buildings in the area were getting \$2,950 per month. In fact, however, the current comparable market rate for similar buildings in the area was well below \$750 per month. In another case, WorldCom decommissioned its POP in a building in Los Angeles that WorldCom had been serving for over five years after negotiations with the landlord over a reasonable rental rate failed. The landlord's demands for a percentage of revenue made serving the building unprofitable. In another example, WorldCom was forced to close a POP in a building in Boston when the landlord demanded an increase in rent from \$1,000 annually to \$3,000 per month. The landlord refused WorldCom's final offer of \$400 per month. In a New York City building, WorldCom has agreements for two POPs – one at \$558 per month and the other at \$312 per month. Both agreements have expired, and the building owner now wants \$5,000 per month for each. Currently, the ILEC pays nothing.

negotiate reasonable rates.¹⁴ In these cases, WorldCom had to advise several customers to place their orders with the ILEC.¹⁵

WorldCom has had to walk away from¹⁶ or cancel projects in several buildings this year because of landlords' high rent demands. As is often the case, these landlords refused to negotiate with WorldCom to arrive at more reasonable rates. Even under a collocation scenario, serving these buildings would not have been profitable for WorldCom.

In several buildings, WorldCom is being stopped by landlords' high fee demands¹⁷ or terms that restrict its ability to upgrade its systems or install more capacity.¹⁸ In most of these cases, the landlord will not allow WorldCom's engineers to install fiber outside of building conduit, a measure that would cut down on the costs of

¹⁴ In twenty-one buildings in Texas, New Mexico, Colorado, Oklahoma, Arizona, and Utah, WorldCom has been forced to collocate, rather than put in POPs, due in most cases to high access fees.

¹⁵ For example, in a building in Los Angeles, WorldCom was forced to move equipment into a collocation arrangement to serve a customer due to the landlord's refusal to negotiate reasonable rates. Due to space restraints in the collocation space, WorldCom was not able to put in all of the circuits the customer needed and had to advise the customer to place the remainder of its order with the ILEC.

¹⁶ For example, WorldCom was forced to cancel a project in Northern Virginia primarily due to the landlord's unreasonable rent demands. The landlord wanted WorldCom to pay \$750 per month, plus annual escalations, for the right to pull each cable to the customer.

¹⁷ For example, the landlord of a building in Milwaukee, Wisconsin demanded \$1,200 per two inches of space per riser per month. This fee was in addition to the price per square foot for the floor space. In this case, WorldCom was seeking to provide service to a large customer who needed redundancy. Not only would the landlord not agree to reduce the \$1,200 per month fee, but also would not agree to allow WorldCom make both runs in the risers for the \$1,200 fee for this one customer. In a New York City building, the building owner wants WorldCom to pay him for every circuit. WorldCom has hundreds of circuits in the building.

¹⁸ In another case, WorldCom was stopped by the landlord of a building in Atlanta, Georgia, from building three feet of conduit and expanding two pull boxes in the building. WorldCom has a License Agreement at this building and installed a POP. During renewal negotiations for a 1,100 square foot space, the landlord requested \$3,000 per month for use of a conduit that was installed years ago. It is not customary to collect rent on a conduit that was built years ago. In another Atlanta building, the landlord stopped WorldCom's engineers from adding a conduit and removing an existing one, saying that WorldCom would have to enter into a License Agreement and pay a fee of \$75,000. WorldCom has three Access License Agreements for this building that are in good standing which cover upgrades, construction, installations and maintenance. After six months of negotiation, WorldCom finally convinced the landlord to allow construction of the needed conduit. In another example, the landlord of a building in New York City wants to charge WorldCom an additional fee to run fiber, even though WorldCom has a License Agreement in place that covers fees.

cable pulls and associated rates.¹⁹ These landlords are insisting that fiber be placed in conduit, which makes the technology much less cost-efficient.²⁰

In some cases, the landlord creates a Meet-Me-Room (MMR) in a building, through which all service providers seeking to serve customers must connect, despite existing contract terms that allow access at much lower rates.²¹ Often the rates the landlord demands for space in the MMR bear no relation to the cost of interconnection.²² It is often the case that the capacity of the MMR facilities is below the amount needed by WorldCom to supply its most advanced services. Moreover, requiring all competitors to interconnect at a single point eliminates the redundancy required by many customers interested in purchasing broadband services. In addition, requiring competitors to rely on inside wire maintained by the landlord's agents makes it difficult for broadband providers such as WorldCom to maintain service level agreements with customers.²³

Lengthy contract negotiation periods also delay CLEC ability to serve customers in MTEs. Landlords are economically able to delay access to competitors in hope of extracting maximum access fees because ILECs have gained nearly ubiquitous access

¹⁹ In a New York City building, WorldCom is being stopped by the landlord from building new fiber riser for large customer/tenant. The landlord will probably allow only a home run to this customer.

²⁰ In five buildings in New York City, landlords are insisting that WorldCom put all fiber in conduit.

²¹ For example, WorldCom has a license agreement for a building in Buffalo, New York -- an agreement that is in good standing. In spite of this agreement, the landlord is requiring WorldCom to use the MMR, at an additional fee, even though WorldCom's agreement permits it to meet in the MMR at no additional fee and has the right to make direct connections to its customers.

²² In a Northern Virginia building, the landlord hired a telecom consultant who recommended that WorldCom pay a monthly fee of \$850 and a one-time license administration fee of \$1,700 for space for one rack of equipment in the lower level MMR room of the building. The consultant refused to negotiate this rate, even though the market rate for floor space between 150-200 square feet in the McLean, Virginia area ran about \$340 a month at the time. The deal he was proposing at \$850 a month equated to \$1,133 per square foot (using nine square feet for a rack footprint) which is about 45 times the average office lease rental rate. The ILEC is not paying anything currently.

²³ For example, in some of the buildings WorldCom serves, landlords often refuse to set reasonable time frames for letting WorldCom begin work to serve a tenant once a contract is negotiated. WorldCom has service level agreements that obligate it to begin service within two weeks after a contract is negotiated, but it often has to wait months after a contract is negotiated before getting permission from the landlord to perform actual upgrades and/or installation work.

already. Landlords reason that if competitors refuse to pay fees that are discriminatory, and therefore do not provide competitive service, tenants will still be able to obtain service from the ILEC. On average, it takes WorldCom six to nine months from an initial request for MTE access until the successful conclusion of contract negotiations. In most cases, these lengthy contract negotiations occur simply because landlords refuse to agree upon reasonable rates. Landlords use their leverage as building monopolists to force CLECs to pay high rents, a percentage of gross revenues, or per circuit fees.

Landlords also exploit their market power to impose significant rate increases on CLECs during contract renewal negotiations. WorldCom negotiated favorable terms on many of its leases prior to the 1996 Act. However, many of these leases are coming up for renewal. Landlords are now demanding 10-50 fold rate increases that make it economically inefficient for WorldCom to continue serving tenants in these buildings.²⁴ These demands often make it impossible for WorldCom to serve additional customers in a building.²⁵ In contrast to the escalating fees that landlords expect WorldCom to pay, the ILEC continues to gain access to buildings free of charge.

Landlords' high rent demands also increase the amount of time it takes to complete contract renewals. WorldCom currently serves customers in hundreds of buildings where issues with the landlord regarding contract renewal terms remain

²⁴ WorldCom is currently paying \$10,000 per year for access to a building in New York. For renewal, the landlord is now requesting \$100,000 per year.

²⁵ In a building in Chicago, the building owner has demanded that WorldCom sign a new agreement to renew that limits our rights and inhibits our ability to do business. The fee the landlord is demanding will cover only our existing customers. WorldCom is required to pay an additional fee for any new customers WorldCom secures in the building. The landlord wants \$2000 per month plus \$1500 up front to the building owner. WorldCom is currently paying \$600 per month.

unresolved. In these buildings, WorldCom is in danger of being evicted, being unable to serve the customer, or being forced to strand capital assets.²⁶

IV. The Difficulty Competitors Have In Gaining Access To MTE Environments Also Has An Impact On CLEC Ability To Provide Advanced Services

Since the passage of the Telecom Act, WorldCom, along with other CLECs, has invested tens of billions of dollars in order to offer competitive local exchange services using all of the entry vehicles contemplated by the 1996 Act. To this end, WorldCom has sought to provide such service over its own facilities, whether via fixed wireless or its own fiber facilities. Yet, even as a facilities-based provider, WorldCom cannot provide competitive local exchange services -- including advanced services -- without obtaining prompt, non-discriminatory access to MTEs.

In the past year, over a dozen CLECs have declared bankruptcy or are now in financial distress. Since June of 2001, forty-three CLECs have applied to the FCC for

²⁶ For example, after extended negotiations, WorldCom finally agreed to double its rental payment to \$20,000 annually and signed a contract sent by the landlord of a building in Boston, Massachusetts. The landlord subsequently reneged and refused to countersign, demanding instead that the rent double again to \$40,000 annually -- a 400% increase. WorldCom refused, since the \$20,000 fee would have been the highest rent in Boston. WorldCom has now been told to expect an eviction notice. In another example, WorldCom is currently providing service to tenants in a building in New York City where WorldCom has no license agreement in place that permits our continued use of the building agreement. WorldCom is paying the landlord under current contract terms; however, the landlord has refused to come to terms with WorldCom on a reasonable renewal rate. Because WorldCom is in the building with no agreement, the building owner could bar WorldCom from further access to our facilities and could even evict us. In this case, WorldCom provides service to the landlord's own company, as well as many other tenants in this building. WorldCom was paying \$400 per month under a valid license agreement which expired 10/01 and automatically renewed, with a 3% increase, for another year's term in 10/02. After the contract had automatically renewed, the landlord said that he didn't accept the validity of our option to renew or even the existence of a contract. The agreement expressly prohibited any oral representations and required any notices to be in writing. The landlord demanded \$2000 per month for access. When WorldCom attempted to negotiate a more reasonable rate, the landlord demanded \$4000 per month. WorldCom countered with a reasonable offer for space used -- \$50 per square foot. The landlord countered by sending the tenants in the building a memo informing them that: "Despite best efforts out forth by [the property holding corporation], MCI has yet to make any good faith efforts to renew the lease. If the lease is not renewed...[MCI's] attendance here will be terminated...[and] "there may be an interruption with service for all MCI customers [in the building]." For WorldCom, as is the case for many other CLECs, paying \$4000/month for access to

authority to discontinue services in part or all of their territories. Even among those CLECs that have not filed for bankruptcy, the financial impact has been staggering. An increasing number of CLECs are ceasing operations or reducing their footprints.

Until CLECs can show the capital markets that they can gain access to MTEs, funding for network expansion will be limited. Under current market conditions, there is little prospect that CLECs will have sufficient capital to undertake network construction at the pace of the late 1990s, much less reduce their reliance on ILEC facilities to any significant degree. The ability of CLECs to add buildings to their networks is also constrained by their limited capital budgets. These constraints have become even more severe given the downturn in the capital markets and the financial difficulties faced by many competitive LECs. Thus, access to building facilities that comprise the last mile is essential for CLEC network expansion.

V. Discriminatory Practices And Unreasonable Demands Delay CLEC Deployment Of Advanced Services Facilities, and Also Raise CLEC Cost Of Providing Advanced Services

Installation of fiber, a key component in many CLECs' network deployment plans of the late 1990s, has slowed dramatically lately, due almost entirely to the fact that CLECs are unable to obtain additional funding to support network expansion. CLECs who desire to connect the new networks that would eliminate the barriers to advanced services deployment are being prevented from doing so by landlords' discriminatory practices.

one building is not a sustainable business model. Nor does WorldCom consider the landlord's demands a good faith effort. This is particularly true when, as is usually the case, the ILEC pays nothing (\$0).

VI. Discriminatory Practices Also Impact Worldcom's Ability To Provide Fixed Wireless Broadband Access

WorldCom has made a significant investment in providing fixed wireless broadband access using its Multi-Channel Multi-Point Distribution Service (MMDS) licenses. MMDS provides a facilities-based, last mile broadband access platform that is particularly well suited for coverage of suburban and rural areas. WorldCom already provides MMDS broadband service in 13 markets, many of which are small and mid-sized markets.²⁷

The provision of MMDS currently requires line-of-sight between the customer premise antenna and WorldCom's base station antenna.²⁸ In order to accomplish this, it is usually necessary to mount the customer premise antenna on the roof of the customer's building. Therefore, reasonably priced, speedy access to rooftops is essential to the success of WorldCom's MMDS service. A typical installation (once rooftop access is granted) can be completed within several days. Unreasonable costs or extensive delays in obtaining approval to access the rooftop have resulted in customers canceling their contracts for MMDS service. In many cases, denial of rooftop access will result in customers having no broadband service, as WorldCom's MMDS service is the only reasonably priced broadband service available in certain areas.²⁹ MMDS service typically costs about \$200 per month (\$2400 per year) for 384 kbps symmetrical service.

²⁷ In 2000, WorldCom deployed commercial service in Memphis, TN, Baton Rouge, LA, and Jackson, MS. In 2001, WorldCom deployed commercial service in Bakersfield, CA, Chattanooga, TN, Montgomery, AL, Tallahassee, FL, Lafayette, LA, Pensacola, FL, Hartford, CT, Springfield, MA, Minneapolis, MN, and Kansas City, MO.

²⁸ WorldCom is actively working with its equipment vendors on next generation equipment that will not require line-of-sight, but this equipment is not yet commercially available.

²⁹ Customers that do not have access to DSL or cable modem service often do have access to T-1 service; however most of WorldCom's customers do not need symmetrical 1.544 Mbps service and cannot afford its steep price.

In order for this service to be offered at reasonable rates (and thus, to be commercially viable), rooftop access must also be priced reasonably.

WorldCom has experienced an increasing number of problems in obtaining rooftop access from landlords and building owners. As WorldCom continues to deploy service to new customers, the problem of rooftop access becomes more critical. These problems can be grouped into four general categories:

- (1) outright refusal of access to rooftop;
- (2) unreasonable lease terms, including unreasonable fees;
- (3) unreasonable delay in granting approval for rooftop access; and
- (4) lack of reasonable access to rooftop for antenna maintenance.

As detailed in the attached affidavit of Julie Wick, Senior Facilities Specialist for WorldCom, the most common problem is the unreasonable fees charged by the building owner for rooftop access. In one case, the building owner required a monthly fee for rooftop access that was higher than the monthly fee WorldCom would charge its customer for MMDS service, and in another case, the fee was as nearly as high as the monthly fee that WorldCom would charge. Unreasonable fees for rooftop access have resulted in the loss of at least one customer contract, and in numerous other cases customer contracts are on hold while WorldCom and its customers negotiate with the building owners.

On at least one occasion, rooftop access was entirely denied, resulting in the loss of the customer contract. On two other occasions, WorldCom was initially denied access; however, access was later approved as a result of intervention by the customer. In each of these cases, however, the approval was revoked when the building owners did

not like the appearance of the antennas. As a result, both of these customer contracts were lost.

WorldCom has also experienced unreasonably long delays in obtaining rooftop access approval, with the approval process often taking as long as two to three months. In cases where the customer urgently needs broadband access, these delays can be detrimental to the customer's business. In one case, another carrier's ISDN line had gone down and an entire building of customers needed an immediate replacement service. WorldCom's MMDS service was the only option available, and WorldCom was prepared to resolve this problem with an immediate MMDS installation. However, the building owner's approval process took 40-60 days and involved a lengthy lease amendment for roof access rights. In another situation, WorldCom was faced with unreasonable conditions for rooftop access, such as a requirement to provide five days advanced notice for antenna maintenance work. WorldCom is currently negotiating with that building owner for more reasonable access terms; however the customer contract is on hold until an agreement is reached.

VII. The FCC Has Ample Authority To Ensure CLECs Timely and Reasonable Access to MTEs

WorldCom, along with many other competitive telecom service providers, contends that the FCC has ample authority under existing law to address this issue. The Commission has broad authority under Title I of the Communications Act to adopt rules governing entities which do not qualify as common carriers when such rules are "reasonably ancillary" to the performance of its statutory responsibilities.³⁰ In this case, the Commission has Title I authority to impose non-discrimination rules on MTE owners

because such rules are “reasonably ancillary” to the Commission’s Title II duties to ensure that rates and practices among common carriers are just, reasonable, and non-discriminatory.³¹ Moreover, such rules are “reasonably ancillary” to the Commission’s responsibility to facilitate greater competition among telecommunications providers in MTEs, as required under sections 251(c) and (d).³² Section 224 of the Act provides another coherent means of ensuring CLECs reasonable and non-discriminatory access to MTEs.³³ The FCC also has been upheld by the Supreme Court in the use of section 411 joinder authority. This authority permits the FCC to join a party who is not a telecommunications carrier as a defendant in a section 201 complaint. By this means, the FCC can assert its general non-discriminatory requirements in the MTE context. The extensive record established by competitors in the Competitive Network proceeding strongly supports the conclusion that the Commission has ample jurisdiction.³⁴ The additional information presented the comments of the Smart Buildings Policy Project should help eliminate any of the FCC’s remaining uncertainties concerning jurisdiction.

VIII. A National Solution is Needed

Although some of the states have recognized the building access problem and have enacted legislation to ensure that consumers and businesses in MTEs have access to

³⁰ *U.S. v. Southwestern Cable*, 392 U.S. 157, 178 (1968); *see also* 47 U.S.C. § 154(i).

³¹ 47 U.S.C. § 201(b). Under section 201, the FCC has authority to prevent any LEC from participating, even indirectly, in discriminatory actions.

³² 47 U.S.C. §§ 251 (c) and (d).

³³ 47 U.S.C. § 224 (f)(1).

³⁴ *See e.g., Promotion of Competitive Networks in Local Telecommunications Markets*, WT Docket No. 99-217, Comments of the Smart Buildings Policy Project (filed January 22, 2001) and Reply Comments of the Smart Buildings Policy Project (filed February 21, 2001) for a discussion of the Commission’s authority under the Communications Act of 1934 and the Telecommunications Act of 1996 to ensure non-discriminatory access to MTEs. *See also* Letter from Gunnar D. Halley, Counsel for Smart Buildings Policy Project to Ms. Magalie R. Salas, WT Docket No. 99-217, September 5, 2000 for a discussion of the

the telecommunications provider of their choice,³⁵ the majority has not. Thus, in most states, competitors are left without building access remedies. Even in the states where landlords are required to grant competitors non-discriminatory access to MTEs, these requirements can be rendered ineffective by the operations of nationwide property management companies. For example, multi-state landlords can pressure competitive service providers not to exercise their rights in one state out of fear these service providers will be denied access by that landlord in another state. A national solution is needed.

IX. Worldcom's Experience Is That The Texas Environment Works To Ensure That Competitive Service Providers Have Reasonable Terms For Building Access

President Bush, as Governor of Texas, signed legislation that prohibits property owners from interfering with or preventing a telecommunications service provider from installing telecommunications service facilities on the owner's property at the request of a

constitutional and jurisdictional issues related to the Commission's authority to promulgate non-discriminatory access rules.

³⁵ The Nebraska Public Service Commission ordered statewide telecommunications carrier access to residential multi-dwelling units (MDUs). *In the Matter of the Commission, On Its Own Motion, To Determine Appropriate Policy Regarding Access To Residents of Multiple Dwelling Units (MDUs) in Nebraska By Competitive Local Exchange Telecommunications Providers*, Application No. C-1878/PI-23, Order Establishing Statewide Policy for MDU Access, slip op. at 4 (Neb. P.S.C., March 2, 1999). The Ohio Public Utility Commission held in an order that "no person owning, leasing, controlling, or managing a multi-tenant building shall forbid or unreasonably restrict any occupant, tenant, lessee, or such building from receiving telecommunications services from any provider of its choice, which is duly certified by this Commission." *Commission's Investigation into the Detariffing of the Installation and Maintenance of Simple and Complex Inside Wire*, Case No. 86-927-TP-COI, Supplemental Finding and Order, 1994 Ohio PUC LEXIS 778 at *20-21 (Ohio P.U.C. September 29, 1994). At the Summer 1998 meeting, The National Association of Regulatory Utility Commissioners (NARUC) addressed the issue of nondiscriminatory access to buildings for telecommunications service providers by passing a resolution urging regulatory and legislative action to ensure that consumers can secure building access for the service providers of their choice on reasonable and non-discriminatory terms. In this resolution, NARUC came out in support of legislative and regulatory policies -- in particular, those similar to statutes and rules in Texas and Ohio -- that allow customers to have a choice of access to telecom providers in multi-tenant buildings; and that will allow all telecom providers to access, at fair, nondiscriminatory and reasonable terms and conditions, public and private property in order to serve a customer that has requested service of the provider. Resolution Regarding Nondiscriminatory Access to Buildings for Telecommunications Carriers, NARUC, Approved Telecommunications Resolutions, Summer 1998 Meeting.

tenant.³⁶ The Texas law contains a nondiscrimination provision that requires the property owner to treat all telecommunications service providers in the same way it treats the ILEC, or renegotiate with the ILEC to treat it in the same way that it treats all telecommunications service providers. Moreover, Texas allows for reasonable compensation for the MTE owners, but it prohibits building owners from demanding compensation on the basis of the type of facilities used, the number of tenants served, or the revenues generated by the telecommunications service provider. Finally, Texas considers any access restrictions that impose delays to be discriminatory and subject to enforcement by the Texas Public Utilities Commission. The Commission should establish a national set of policy principles, using the rules established in Texas as a model, for the states to follow that ensure reasonable and nondiscriminatory access to tenants in MTEs.

X. Conclusion

WorldCom respectfully recommends that the Commission adopt rules that ensure competitive carriers access to tenants in multi-tenant environments as suggested herein.

Respectfully Submitted,

WORLDCOM, INC.

A handwritten signature in black ink, appearing to read 'K. Johnson', written over a horizontal line.

Karen M. Johnson
WorldCom, Inc.
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202-736-6453

Dated: March 8, 2002

³⁶ Texas Public Utility Regulatory Act, §§ 54.259 and 54.260, implemented by Texas Public Utility Commission Project No. 18000.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Promotion of Competitive Networks in)	WT Docket No. 99-217
Local Telecommunications Markets)	

AFFIDAVIT OF JULIE WICK

I, Julie Wick, hereby declare as follows:

1. My name is Julie Wick. I am Senior Facilities Specialist for WorldCom, Inc. My responsibilities include monitoring and resolving problems encountered during installation of facilities for WorldCom's MMDS service.

2. WorldCom deployed commercial MMDS service in three markets in 2000: Memphis, TN, Baton Rouge, LA, and Jackson, MS. In 2001, WorldCom deployed commercial service in ten additional markets: Bakersfield, CA, Chattanooga, TN, Montgomery, AL, Tallahassee, FL, Lafayette, LA, Pensacola, FL, Hartford, CT, Springfield, MA, Minneapolis, MN, and Kansas City, MO. Service in many of these markets was launched during the second half of 2001.

3. WorldCom is actively selling MMDS service, and continues to deploy MMDS service to new customers.

4. WorldCom has encountered a number of problems gaining access to rooftops for antenna installation. Following is a list of examples of these problems:
 - (1) Outright refusal of access to rooftop.
 - (a) In Memphis, a building owner denied access to the rooftop, resulting in the loss of a customer contract.
 - (b) Another Memphis property manager initially denied access to the rooftop. Later, the manager approved access after the tenant complained, but only if the antenna would not be visible from street. Since the building is a single story building, any antenna would have been visible from street, so the contract was lost.
 - (c) In a similar situation in Kansas City, a building owner made WorldCom remove its antenna from the roof after the installation had been approved because the owner thought the antenna was too high (35 feet).
 - (d) A Minneapolis building owner initially declined WorldCom's request for rooftop access. The owner later agreed to allow access if the tenant would sign a lengthy amendment to the lease for roof rights, but the owner took over 2 months to provide the amendment to the tenant. The installation is currently on hold while the tenant reviews the amendment.

(2) Unreasonable lease terms, including unreasonable fees.

(a) In Kansas City, two building owners required unreasonable fees for rooftop access – from \$500 per month to as much as several thousand dollars per antenna per month. As a result, one customer contract was lost and a second customer contract is on hold, and will probably be lost.

(b) In Minneapolis, two building owners demanded unreasonably high fees for rooftop access. In one case, the owner's monthly fee was higher than the monthly fee WorldCom would charge its customer for service. As a result, WorldCom mounted the customers' antennas in their windows, which is less desirable than rooftop mounts, as line-of-sight can be more easily obstructed. In many cases, window mounting would not be an option, but it was sufficient in these cases because these customers were using MMDS as a backup system, rather than as their primary broadband service.

(c) Any potential sales to customers in buildings owned or managed by a particular real estate company in Minneapolis have been delayed due to the building owner's request for revenue sharing. This real estate company owns or manages 196 buildings in metropolitan Minneapolis. Four to five customer contracts are on hold as a result.

(3) Unreasonable delay in granting approval for rooftop access.

(a) In Kansas City, a company that manages 20-30 properties has a 2-3 month process for rooftop access approval. This has already resulted in the loss of one customer.

(b) In Memphis, one building manager took over 60 days to approve rooftop access. The customer, a mortgage lending company, urgently needed broadband service.

(c) An entire building of tenants in Minneapolis requested service because another carrier's ISDN line had gone down. The building owner initially denied access. Later, access was approved, but the approval process took 40-60 days and required an extensive lease amendment for roof rights. WorldCom was attempting to deploy service quickly to resolve major problems for businesses that rely on Internet connectivity.

(4) Lack of reasonable access to rooftop for antenna maintenance.

(a) In Kansas City, a building owner refused to grant WorldCom 24x7 access to the roof and demanded 5 days notice for access to the roof for maintenance work. This would have prevented WorldCom from fulfilling its 2 hour service guarantee. This contract is on hold while WorldCom negotiates with the building owner for reasonable access and notice terms.


Julie Wick

3/8/2002

Certificate of Service

I, Barbara Nowlin, do hereby certify that copies of the foregoing Comments of WorldCom, Inc. in the matter of Promotion of Competitive Networks in Local Telecommunications Markets were sent via first class mail, postage paid, to the following on this 8th day of March, 2002.


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** hand delivered



Barbara Nowlin